

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,819
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare refusing to restore Food Stamp benefits which the petitioner maintains he was entitled to from July through October, 1998. The issue is whether any underpayment of Food Stamps to the petitioner resulted from Department error.

FINDINGS OF FACT

1. The petitioner was receiving \$10 per month in Food Stamps in June, 1998, based on his earned income (as a drywall installer) and unearned SSI income and the shelter situation that he had previously reported to the Department in April of 1998. In that April 1998 application for benefits, the petitioner declared that he was living in Wells River where his rent was \$400 per month including heat but gave a mailing address in care of his uncle in Mt. Holly. Filed along with this application was an "Agreement to Report Change" form signed by the petitioner and dated April 7, 1998 wherein the petitioner agreed that he would report changes in his gross monthly income and in his residence within ten days of their occurrence by either sending a change form, writing, telephoning or visiting the

district office.

2. The petitioner alleges that he stopped working on June 28, 1998 due to medical problems, and that he also moved that day to Rutland from Mt. Holly, where he claims he had been living since January of 1998 with his uncle (who had also been his employer).¹ The petitioner did not inform the Department that he had stopped working because he felt that computerized information regularly sent from the Social Security Administration to the Department showing his level of benefits was sufficient to put the Department on notice as to his level of income. If his Social Security benefits went up, he felt the Department should be able to infer that his earned income went down.

3. The petitioner alleges that he did mail the Department a Shelter Expense Statement form on June 19, 1998, informing the Department of his move and his increased shelter costs of \$425 per month without utilities. The Department has no record of having received such a statement.

4. On July 14, 1998, the Department sent the petitioner a notice at his Mt. Holly address informing him

¹ The petitioner was not able to explain why he had verified that he was living in Wells River in April of 1998 when he now claims that he had actually lived in Mount Holly since January of 1998. This fact is not relevant to the determination in this matter except insofar as it reflects on the petitioner's honesty with the Department and general credibility.

that his Food Stamp benefits would increase from \$10 to \$27 based on computerized information it had received from the Social Security Administration that his SSI income had decreased by about \$100 per month. The calculation attached to the notice indicated that the Department was still using a figure of \$795.80 per month for earned income from the Petitioner's employment. That notice was not returned to the Department but the petitioner claims that he never received it.

5. On August 12, 1998, the Department sent the petitioner another notice adjusting his Food Stamp benefits from \$27 to \$10 based on information from the Social Security Administration that his SSI had increased by over \$400 per month. The calculation attached to the notice indicated that the Department continued to use a figure of \$795.80 per month as an earned income figure from the petitioner's employment. The petitioner claims that he did not receive this notice but, again, the Department has no record that it was returned.

6. Throughout the period from July through October of 1998, the petitioner's Food Stamps were calculated using the earned income figure of \$795.80 originally supplied by the petitioner and the monthly SSI figure supplied by the Social Security Administration. Food Stamp checks for each month were mailed to the same Mt. Holly address. The petitioner agrees that he did receive those checks and cashed them.

7. The petitioner called the Department on November 17, 1998, to inquire about the status of his Food Stamps. He did this because he thought he should be receiving more than \$10 per month when his only income was SSI. (He knew that his brother who was also an SSI recipient was receiving \$125 per month in Food Stamps.) The petitioner had an in person interview with his worker of seven years at that time who told him that the Department had received no report of his work or shelter change and advised him to file such change forms immediately, which he did that same day. Based on this information the Department notified the petitioner that his Food Stamps would increase from \$10 to \$125 effective November 1, 1998. The petitioner has no dispute regarding the Department's determination of his Food Stamps as of that date.

8. The petitioner has requested, however, that the Department retroactively pay him an increase in Food Stamps from July through October, 1998, based on the fact that he was not working during this time and was incurring higher shelter expenses.

9. At the hearing in this matter, held on June 8, 1999, the petitioner admitted that the Shelter Expense Statement he claims to have sent to the Department in June, 1998, contains no information whatsoever regarding his work status. The petitioner admits that he did not otherwise inform the Department that he had stopped working. He also

admits that on the computer information sent to the Department by the Social Security Administration there is no specific information as to an SSI recipient's work status.

10. The petitioner maintains, however, that the Department should have gleaned from the increase in his SSI that was reported for September, 1998, on the computer printout that he was no longer working.

11. The Department maintains that computer notices from Social Security are processed electronically, and that the information contained in them is not scrutinized by individual workers prior to that information being factored into the calculations of recipient's Food Stamps. The notices of benefit adjustments based on SSI changes are sent by computer, not by the workers. Even if the workers were to analyze the Social Security data, it would not be possible to tell whether the clients had earned income or not from those numbers. At best, a worker might suspect from Social Security fluctuations that some change in income might be occurring. The petitioner's worker pointed out as well that tape matches run about two months behind the actual change so that even if monitoring were done, there would be a lag time before the change would even be noticed.

12. The worker testified in addition that during her several years as his worker she observed that the petitioner had a problem with making timely reports of changes, even those which worked in his favor. He tended to only give the

Department new information every six months when he was required to come in for a review. As an example, she cited her recent discovery through a DET computer match that the petitioner had begun working again and had not reported that fact within ten days. She had sent the petitioner a verification form which he had only returned the day of the hearing. The petitioner responded that he only worked six days so did not feel he needed to report his work since it would not affect his benefits.

13. Information submitted by the petitioner and the Department at the hearing regarding the payment history of his SSI benefits shows that during the months of June through September, 1998, several adjustments were made to the petitioner's SSI, some of them unrelated to his employment status.² The petitioner admits, for instance, that some of these adjustments were based on prior overpayments that were no longer being recouped, and could not have been understood without a separate explanation of the reasons for the adjustments, which the Social Security Administration did not furnish to the Department.

14. At the hearing in this matter, the Department, at

² The tape matches showed the following SSI income reported to the Department:

July 1998 - \$54.91
August 1998 - \$481.41
September 1998 - \$548.91
October 1998 - \$548.91

the request of the hearing officer, calculated whether the changes the petitioner alleges he reported in his housing expenses as of July, 1998, in and of themselves, would have made a difference in the amount of his Food Stamps. For all the months at issue (July through October, 1998) there would have been a total increase of \$134 in the petitioner's Food Stamps if the Department had known of his housing situation. The petitioner does not dispute this aspect of the Department's calculations.

15. Based on the above it cannot be found that the Department knew or should have known that the petitioner no longer had earned income after June, 1998, until the petitioner, himself, finally reported it in November, 1998.

16. Based on the above evidence, including serious discrepancies in the petitioner's testimony and his history of non-reporting to the Department, it appears unlikely that the petitioner sent the shelter change form to the Department as he claims in June of 1998, so as to put them on notice of his new address.

17. Furthermore, it is found that the petitioner is likely to have received both the July and August 1998 notices of adjustment to his Food Stamp benefits, both because they were not returned and because he received the Food Stamp benefits sent to the same address. It is further found that he was put on notice at both times that the Department was still using his Mt. Holly address and his

earned income from his job in calculating benefits. At that point, it was certainly incumbent upon the petitioner to have contacted the Department to correct the wrong information which the Department was using.

ORDER

The Department's decision is affirmed.

REASONS

The Food Stamp regulations, at § 273.17(a)(1), provide, in pertinent part, as follows:

Restoration of Lost Benefits

a. Entitlement

1. The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency. . . . Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits shall be restored for not more than 12 months prior to whichever of the following occurred first:

- i The date the State agency receives a request for restoration from a household; or
- ii The date the State agency is notified or

otherwise discovers that a loss to a household has occurred.

. . .

There is no question that the petitioner would have been entitled to several hundred more dollars in Food Stamp benefits over the period in issue if the Department had been using the correct information regarding the petitioner's income and shelter. Under the above regulation, however, the petitioner can only have these Food Stamps restored if the incorrect lower benefit was paid on account of agency error.

The facts in this case do not support such a finding. The Department had no information in its possession regarding the petitioner's employment or shelter change from which it could have made the correct calculations. Although the petitioner claims to have informed the Department as to the shelter change, the facts above indicate that it was unlikely that the petitioner kept the Department abreast of such a change. The petitioner admits that the only way the Department could have known he was no longer working as of June 28, 1998, was to glean that information from computer printouts of the amount of SSI the petitioner was being paid in those months.

Food Stamp Manual (FSM) § 273.12(a) requires all households to report changes in circumstances to the Department within 10 days of the date the change becomes

known to the household. Moreover, as a condition of receiving benefits, recipients are required to sign a form acknowledging the duty to report changes and agreeing to promptly report such changes to the Department. The petitioner in this matter admits that he did understand this requirement but did not directly report the fact that he had stopped working to the Department until more than four months had elapsed. The regulations do not require the Department to be clairvoyant with regard to his earned income changes.

In light of the above, it cannot be concluded that the fact that the petitioner received Food Stamps from July through October based on earnings he was no longer receiving was "caused by an error" on the part of the Department. Even if the petitioner attempted to notify the Department by mail of the fact that he had moved (although it is inexplicable why he would not also have informed the Department of the fact that he was no longer working) the Department sent the petitioner two subsequent notices explaining how it had calculated the petitioner's Food Stamps, neither of which was returned; and the petitioner received the Food Stamps that were sent to his old address during those months. Despite this, the petitioner did not contact the Department until November, 1998, to inquire about the amount of his Food Stamps. The petitioner's failure to receive the Food Stamps to which he would have

been entitled must be blamed on his own inattention and negligence rather than any error by the Department.

In light of the above, it must be concluded that the Department's decision that the petitioner was not underpaid Food Stamps due to an error on its part must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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